LSMJ EXPLORATION GROUP

IBLA 81-665 Decided March 30, 1982

Appeal from decision of the Colorado State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer C-29724.

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents--Oil and Gas Leases: Applications: Drawings

   Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the agent signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

2. Constitutional Law: Generally--Oil and Gas Leases: Generally--State Laws

   Federal statutes governing mineral leasing on the public lands, and regulations duly promulgated pursuant thereto, supersede state laws governing agency relationships to the extent of any inconsistency therewith for purposes of determining the first qualified offeror for a Federal oil and gas lease.

APPEARANCES: Craig J. Zicari, Esq., Rochester, New York, for appellant; Harold J. Baer, Jr., Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The LSMJ Exploration Group (LSMJ) appeals from a decision dated April 13, 1981, of the Colorado State Office, Bureau of Land Management (BLM), rejecting its simultaneous oil and gas lease offer C-29724.

Appellant's offer was drawn with first priority for parcel No. CO-148 in the December 1979 drawing. On January 12, 1981, BLM requested additional evidence concerning the preparation of the offer and the affixing of the facsimile signature to the drawing entry card (DEC), which bore the facsimile signature of Michael Distante, a partner of LSMJ. In response to this request, BLM received a copy of a service agreement between appellant and Upstate Oil Advisory Services, Inc. (Upstate). The terms of this contract state that Upstate would provide its advisory services "in connection with," and would file 600 filings during the course of one year "pursuant to," Upstate's Federal Oil Land Acquisition Program.

Based upon these facts, BLM concluded that Upstate was acting as an agent for LSMJ. The effect of such agency, BLM further concluded, was to require that appellant's offer be accompanied by certain statements referred to in 43 CFR 3102.6 (1979). 1/ Failure to accompany its offer with such statements caused rejection of appellant's offer.

On appeal, counsel for appellant argues that the regulation cited by BLM, 43 CFR 3102.6-1, did not apply to LSMJ because that regulation requires additional evidence and statements of interest only when an offer is signed by an attorney-in-fact or agent on behalf of the offeror. Appellant asserts that the question of an agency relationship is governed by the law of the State of New York in which both the offeror and the filing service are located. Under New York law, counsel contends that the approved manner of

1/ This regulation was revised effective June 16, 1980. 45 FR 35162 (May 23, 1980). It presently reads as follows:

"§ 3102.2-6 Agents.

"(a) Any applicant receiving the assistance of any other person or entity which is in the business of providing assistance to participants in a Federal oil and gas leasing program shall submit with the lease offer, or the lease application if leasing is in accordance with Subpart 3112 of this title, a personally signed statement as to any understanding, or a personally signed copy of any written agreement or contract under which any service related to Federal oil and gas leasing or leases is authorized to be performed on behalf of such applicant. Such agreement or understanding might include, but is not limited to: A power of attorney; a service agreement setting forth duties and obligations; or a brokerage agreement.

"(b) Where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section. A list setting forth the name and address of each such offeror or applicant participating under the agreement shall be filed with the proper Bureau of Land Management office not later than 15 days from each filing of offers, or applications if leasing is in accordance with Subpart 3112 of this title."

executing a contract by an agent is for an agent to sign his name, indicating both his capacity as agent and the name of the principal for whom he is signing. Counsel avers that a facsimile signature may constitute a valid signature of a party where it is intended to be used for the purpose of executing an instrument and that in such a case the signature is regarded as the valid signature of the party whose name is signed to the instrument. Appellant contends, accordingly, that the DEC was actually signed by Michael Distante as a partner of LSMJ and not by Upstate as agent.

[1] Regulation 43 CFR 3102.6-1(a)(2) (1979) stated:

> (2) If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding. If such an agreement or understanding exists, the statement of the attorney-in-fact or agent should set forth the citizenship of the attorney-in-fact or agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers including options for such leases or interests therein exceed 246,080 acres in any one State, of which no more than 200,000 acres may be held under option, or exceeds the permissible acreage in Alaska as set forth in § 3101.1-5. The statement by the principal (offeror) may be filed within 15 days after the filing of the offer.

In appellant's statement of reasons for appeal, counsel concedes that Upstate did in fact have discretionary authority to act on appellant's behalf (statement of reasons at 7). Despite the able briefing by counsel for appellant of his contention that the signing by an agent of his principal's name to the DEC does not constitute a signing by the agent, this issue has previously been expressly considered and resolved by the Board in a case involving a similar agency relationship. The Board held that:

> Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether [the agent] signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978), rev'd in part, Runnells v. Andrus, 484 F. Supp. 1234 (D. Utah 1980) (reversed only

as to lease offers filed before November 9, 1978); see Cleo Chapekis, 57 IBLA 398 (1981) (Board will apply Pack holding only to offers filed after November 9, 1978). In Pack, supra, we found that a filing service had discretionary authority to act on behalf of an offeror where an agreement existed between these parties by which the filing service for a stipulated fee selected parcels of superior value from the monthly lists of available BLM lands, prepared DEC's for these parcels by inserting the name of the offeror, his facsimile signature, parcel number, and date, and then filed these DEC's in the proper BLM offices. The service agreement at issue here, while not identical to that discussed in Pack, supra, is sufficiently similar to compel the filing of statements pursuant to 43 CFR 3102.6-1 (1979) with appellant's offer. See Elizabeth Murase, 47 IBLA 115 (1980).

Therefore, we find that BLM correctly concluded that Upstate had discretionary authority to act for appellant, and that Upstate, consequently, was required to submit with the DEC the statements listed in 43 CFR 3102.6-1(a)(2) (1979). As appellant did not file the required statements, BLM properly rejected oil and gas lease offer C-29724.

[2] As for appellant's contention that the decision is contrary to New York law, it must be recognized that under the Supremacy Clause of the United States Constitution, Federal law necessarily overrides conflicting state laws with respect to Federal public lands. U.S. Constitution, art. VI, cl. 2; Kleppe v. New Mexico, 426 U.S. 529, 543 (1976); Ventura County v. Gulf Oil Corp., 601 F.2d 1080 (9th Cir. 1979), aff'd 445 U.S. 947 (1980). The Federal laws and regulations are the relevant body of law in this case. Lamar M. Richardson, Jr., 42 IBLA 333 (1979).

Section 32 of the Mineral Leasing Act of 1920, 30 U.S.C. § 189 (1976), authorizes the Secretary of the Interior to prescribe "necessary and proper rules and regulations" and to do whatever else is necessary "to carry out and accomplish the purposes of the Act." Pursuant to that authorization, the Secretary has deemed it appropriate to prescribe the requirements set forth in 43 CFR 3102.6. See Lamar M. Richardson, Jr., supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge